STATE OF NEW YORK

539

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. BRAUNSTEIN, STECK -- read once and referred to the Committee on Judiciary

AN ACT to amend the penal law, the domestic relations law and the family court act, in relation to termination of parental rights in cases of a child conceived through rape

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 130.92 of the penal law is amended by adding a new subdivision 4 to read as follows:

4. The parental rights and responsibilities with respect to a child of a parent convicted of the crime of rape in the first degree as defined in section 130.35 of this article, rape in the second degree as defined in section 130.30 of this article, or rape in the third degree as defined in section 130.25 of this article, that resulted in the conception of such child shall be terminated in accordance with article six of the family court act.

§ 2. Subdivision 1 of section 111-a of the domestic relations law, as amended by chapter 371 of the laws of 2013, is amended to read as follows:

1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to section one hundred fifteen-b of this article relating to the revocation of an adoption consent, when such proceeding involves a child born out-of-wedlock provided, however, that such notice shall not be required to be given to any person who previously has been given notice of any proceeding involving the child, pursuant to section three hundred eight-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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y-four-c of the social services law, and provided further that notice in an adoption proceeding, pursuant to this section shall not be required to be given to any person who has previously received notice of any proceeding pursuant to section one hundred fifteen-b of this article. In addition to such other requirements as may be applicable to the petition in any proceeding in which notice must be given pursuant to this section, the petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice. For the purpose of determining persons entitled to notice of adoption proceedings initiated pursuant to this article, persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, **where it is established after a hearing, by clear and convincing evidence, that such person committed any such offense or** when the child who is the subject of the proceeding was conceived as a result: (A) rape in first [~~or~~]**,** second **or third** degree; (B) course of sexual conduct against a child in the first degree; (C) predatory sexual assault; or (D) predatory sexual assault against a child.

§ 3. Paragraph (b) of subdivision 1-c of section 240 of the domestic relations law, as amended by chapter 182 of the laws of 2019, is amended to read as follows:

(b) Notwithstanding any other provision of this chapter to the contrary, there shall be a rebuttable presumption that it is not in the best interests of the child**, whether born in or out-of-wedlock,** to:

(A) be placed in the custody of or to visit with a person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when a child who is the subject of the proceeding was conceived as a result:

(1) rape in the first or second degree;

(2) course of sexual conduct against a child in the first degree;

(3) predatory sexual assault; or

(4) predatory sexual assault against a child; or

(B) be placed in the custody of or have unsupervised visits with a person who has been convicted of a felony sex offense, as defined in section 70.80 of the penal law, or convicted of an offense in another jurisdiction which, if committed in this state, would constitute such a felony sex offense, where the victim of such offense was the child who is the subject of the proceeding.

§ 4. Subdivision 5 of section 240 of the domestic relations law, as added by section 103 of chapter 398 of the laws of 1997, is renumbered subdivision 6 and a new subdivision 7 is added to read as follows:

7. Notwithstanding any other provision of any law to the contrary, no court shall award custody to a parent who has been charged with violating section 130.25 (rape in the third degree), 130.30 (rape in the second degree), or 130.35 (rape in the first degree) of the penal law, where the child that such parent seeks custody or visitation of was conceived as a result of such rape, until the conclusion of all proceedings associated with such charges. Neither custody nor visitation shall be awarded to a parent who has been convicted of violating section

130.25 (rape in the third degree), 130.30 (rape in the second degree), or 130.35 (rape in the first degree) of the penal law.

§ 5. Article 6 of the family court act is amended by adding a new part 6 to read as follows:

PART 6

TERMINATION OF PARENTAL RIGHTS UPON A FINDING OF CONCEPTION BY RAPE

Section 681. Termination of parental rights upon a finding of conception by rape.

682. Hearing.

§ 681. Termination of parental rights upon a finding of conception by rape. 1. A proceeding for termination of parental rights on the grounds of a finding of conception by rape is originated by a petition alleging that the respondent committed the crime of rape in the first degree as defined in section 130.35, rape in the second degree as defined in section 130.30, or rape in the third degree as defined in section 130.25 of the penal law, and that the child was conceived as a result of such rape. Except as otherwise provided in this part, the provisions of part one of this article shall apply to all proceedings.

2. At the conclusion of the hearing under section six hundred eighty-two of this part the court may terminate all of the parental rights and responsibilities of the respondent if the respondent is found by clear and convincing evidence to have committed rape in the first degree as defined in section 130.35, rape in the second degree as defined in section 130.30 or rape in the third degree as defined in section 130.25 of the penal law, and the child was conceived as a result of such act. An order of disposition shall be made, pursuant to this section, solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular disposition.

§ 682. Hearing. The court shall hold a hearing under this part to determine whether the allegations in the petition that the respondent committed rape in the first degree as defined in section 130.35, rape in the second degree as defined in section 130.30 or rape in the third degree as defined in section 130.25 of the penal law, and that the child was conceived as a result of such act are supported by clear and convincing proof. Only competent, material and relevant evidence may be admitted in a hearing pursuant to this section. A conviction of the respondent on the charges alleged shall not be required for a finding under this section.

§ 6. This act shall take effect immediately.